

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

DONTERRIOUS DAVIS, #33497-058,

Petitioner,

v.

ACTION NO. 2:19cv138

JUSTIN ANDREWS, Warden,<sup>1</sup>

Respondent.

**FINAL ORDER**

Petitioner Donterrious Davis ("Davis"), a federal inmate convicted in the Western District of North Carolina and housed in the Federal Correctional Complex in Petersburg, Virginia, filed a *pro se* petition, pursuant to 28 U.S.C. § 2241. ECF No. 1. Davis requests a recalculation of his sentence pursuant to the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report and recommendation, filed May 18, 2020, recommends that

---

<sup>1</sup> After the filing of the petition, Justin Andrews was appointed warden of FCC Petersburg. It is **ORDERED** that the petition shall be deemed amended to substitute Justin Andrews, Warden, as the sole respondent in this proceeding.

respondent's motion to dismiss (ECF No. 11) be granted and Davis's petition (ECF No. 1) be dismissed with prejudice. ECF No. 14. Each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. No objections have been filed, and the time for filing objections has expired.


The Court, having reviewed the record, does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that respondent's motion to dismiss, ECF No. 11, is **GRANTED**, and the petition for a writ of habeas corpus, ECF No. 1, is **DENIED** and **DISMISSED** with prejudice.

Davis has failed to demonstrate "a substantial showing of the denial of a constitutional right," and, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See *Miller-El v. Cockrell*, 537 U.S. 322, 327, 335-36 (2003).

Davis is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Davis intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Final Order. Davis may seek such a certificate by filing a**

written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this final order to Davis and counsel of record for respondent.

/s/   
Rebecca Beach Smith  
Senior United States District Judge

Rebecca Beach Smith  
Senior United States District Judge

Norfolk, Virginia  
July 24, 2020